

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

NOV 21 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

YOLANDA SOTO POBLETE,

Appellant.

2 CA-CR 2006-0293
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054500

Honorable Edgar B. Acuña, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By Frank P. Leto

Tucson
Attorneys for Appellant

V Á S Q U E Z, Judge.

¶1 Following a jury trial, appellant Yolanda Soto Poblete was convicted of one count of unlawfully transporting more than two pounds of marijuana for sale. The sole issue on appeal is whether the trial court abused its discretion in denying her motion pursuant to Rule 20, Ariz. R. Crim. P., for a judgment of acquittal. For the reasons stated below, we affirm.

Facts and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdict. *State v. Miles*, 211 Ariz. 475, ¶ 2, 123 P.2d 669, 670 (App. 2005). On August 2, 2005, Border Patrol Agent Victor Del Rio was working in the Sasabe corridor located along Highway 246 between Sasabe and Three Points, Arizona. Sasabe is a border town of approximately one hundred residents. At approximately 10:50 a.m., Del Rio observed a white GMC pickup truck with a camper shell traveling north from Sasabe, approximately four miles from the border between the United States and Mexico. He had not seen the vehicle in Sasabe earlier that day. As the truck drove by, he noticed the lone occupant was a female driver who had a "stared [sic] look, grabbing onto the wheel with both hands, and [who] didn't acknowledge [the border patrol agent's] presence on the side of the road. Del Rio pulled onto the road and began to follow the truck. Another border patrol agent, Victor Lopez, waited behind to see if any other vehicles were traveling in tandem with the truck. When this did not appear to be the case, he also began to follow the truck. After following it for about seven miles, the two officers activated their emergency lights.

¶3 The truck pulled over immediately, and Del Rio ascertained the driver, later identified as Poblete, was a United States citizen who did not own the vehicle. Poblete told Del Rio she had driven to Sasabe earlier that morning to drop off a couch for a friend. During their conversation, a third agent arrived with a drug-detection dog and obtained Poblete's permission for the dog to search the interior and exterior of the truck. The dog "alerted" on the passenger side of the vehicle in the area between the cab and bed of the truck, indicating the presence of contraband. On further inspection, Lopez noticed the inside of the truck bed appeared smaller than the outside. Noting the window of the camper shell nearest the cab had been painted black, Lopez broke the window and discovered bales of marijuana hidden in the space between the false end and the actual end of the truck bed. The compartment contained nine bales of marijuana weighing approximately 225 pounds in total.

¶4 Poblete was indicted for one count of transporting for sale marijuana with a weight of more than two pounds. A jury found her guilty, and the trial court sentenced her to a mitigated prison term of four years. This appeal followed.

Standard of Review

¶5 We review the trial court's denial of a Rule 20 motion for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007). We will reverse only if there is "no substantial evidence to warrant a conviction." Rule 20, Ariz. R. Crim. P.; *see also State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable

persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.” *Mathers*, 165 Ariz. at 67, 796 P.2d at 869, *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

Discussion

¶6 Poblete contends the state failed to prove she knowingly possessed the marijuana because it did not produce any direct evidence of her knowledge, and therefore the Rule 20 motion should have been granted.¹ At the close of the state's case, the trial court acknowledged, “I’m not exactly sure that there is substantial evidence but there is enough evidence and more than a scintilla of evidence” from which reasonable persons could draw different conclusions.

¶7 Under § 13-3405(A)(4), a person “shall not knowingly . . . [t]ransport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer marijuana.” The only disputed issue on appeal is whether the state produced sufficient evidence from which the jury could have concluded beyond a reasonable doubt that Poblete knowingly transported the marijuana. “‘Knowingly’ means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists.” A.R.S. § 13-105(9)(b). Thus, the state needed to prove that Poblete was aware or believed she was transporting marijuana for sale.

¹We note that Poblete did not challenge the stop or search of the vehicle below, nor has she on appeal.

¶8 Evidence of knowledge may “of course” be circumstantial, because “rarely can [it] be proven by any other means.” *State v. Ramirez*, 190 Ariz. 65, 69, 945 P.2d 376, 380 (App. 1997) (premeditation, like knowledge and intent, can be proven by circumstantial evidence); *see also State v. Cox*, 214 Ariz. 518, ¶ 10, 155 P.3d 357, 359 (App. 2007) (evidence of knowledge may be circumstantial); *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005) (substantial evidence necessary for conviction may be circumstantial or direct). The state produced evidence that Poblete’s behavior and the appearance of the truck she was driving were both somewhat suspicious and not consistent with her claimed lack of knowledge as to the truck’s contents.

¶9 She appeared scared and tense as she drove past Del Rio, and some of the truck’s windows had been painted black. Del Rio further testified that Sasabe is a very small town and he had not seen the truck when he had driven through the town that morning. This contradicted Poblete’s statement that she had borrowed the truck and driven into Sasabe early that morning to deliver a couch to a friend. The state’s expert witness testified that those who transport drugs from location to location tend to be trusted members of the particular drug operation, and he stated it would be “insanity” for a drug trafficker to allow someone to simply borrow a vehicle containing marijuana and drive it to within four miles of the Mexican border.

¶10 We agree with the trial court that this evidence is far from overwhelming. However, this is not, as Poblete suggests, a case of “mere presence [of drugs in a vehicle,] without more.” *State v. Harris*, 9 Ariz. App. 288, 290, 451 P.2d 646, 648 (1969). Poblete

was the driver and sole occupant of the truck. *See State v. Orendain*, 188 Ariz. 54, 56, 932 P.2d 1325, 1327 (1997) (discovery of marijuana in vehicle defendant was driving sufficient for jury to infer defendant's possession). From the evidence presented, the jury could reasonably have inferred that Poblete knew of the false compartment in the truck bed and knew there was marijuana concealed in it. It could have disbelieved her claim that she had merely borrowed a friend's truck.

¶11 Therefore, we conclude the state presented sufficient evidence from which the jury could conclude beyond a reasonable doubt Poblete knew she was transporting marijuana. *See Ramirez*, 190 Ariz. at 69, 945 P.2d at 380. We cannot say the trial court abused its discretion by denying Poblete's Rule 20 motion.

Disposition

¶12 We affirm Poblete's conviction and sentence.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge